

§ 760.105

§ 760.105 Waiver for certain crop years; buy-in.

(a) For the 2008 crop year, the insurance or NAP purchase requirements of § 760.104 (this is referred to as the “purchase” requirement) will be waived for eligible producers for losses during the 2008 crop year if the eligible producer paid a fee (buy-in fee) equal to the applicable NAP service fee or catastrophic risk protection plan fee to the Secretary by September 16, 2008. Payment of a buy-in fee under this section is for the sole purpose of becoming eligible for participation in ELAP, LFP, SURE, and TAP. Payment of a buy-in fee does not provide any actual insurance or NAP coverage or assistance.

(b) For the 2009 crop year, the purchase requirement will be waived for purchases where the closing date for coverage occurred prior to August 14, 2008, so long as the buy-in fee set by the Secretary of Agriculture was paid by January 12, 2009.

(c) Any producer of 2008 commodities who is otherwise ineligible because of the purchase requirement and who did not meet the conditions of paragraph (a) of this section may still be covered for ELAP, SURE, or TAP assistance if the producer paid the applicable fee described in paragraph (d) of this section no later than May 18, 2009, provided that in the case of each:

(1) Insurable commodity, excluding grazing land, the eligible producers on the farm agree to obtain a policy or plan of insurance under FCIA (7 U.S.C. 1501–1524), excluding a crop insurance pilot program under that subtitle, for the next insurance year for which crop insurance is available to the eligible producers on the farm at a level of coverage equal to 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage, and

(2) Noninsurable commodity, the eligible producers on the farm must agree to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for NAP for the next year for which a policy is available.

(d) For producers seeking eligibility under paragraph (c) of this section, the applicable buy-in fee for the 2008 crop

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year was the catastrophic risk protection plan fee or the applicable NAP service fee in effect prior to NAP service fee adjustments specified in the 2008 Farm Bill.

§ 760.106 Equitable relief.

(a) The Secretary may provide equitable relief on a case-by-case basis for the purchase requirement to eligible participants that:

(1) Are otherwise ineligible or unintentionally fail to meet the requirements of § 760.104 for one or more eligible crops on the farm, as determined by the Secretary, or

(2) Failed to meet the requirements of § 760.104 due to the enactment of the 2008 Farm Bill after the:

(i) Applicable sales closing date for a policy or plan of insurance in accordance with the FCIA (7 U.S.C. 1501–1524) or

(ii) Application closing date for NAP.

(b) Equitable relief will not be granted to participants in instances of:

(1) A scheme or device that had the effect or intent of defeating the purposes of a program of insurance, NAP, or any other program administered under this part or elsewhere in this title,

(2) An intentional decision to not meet the purchase or buy-in requirements,

(3) Producers against whom sanctions have been imposed by RMA or FSA prohibiting the purchase of coverage or prohibiting the receipt of payments otherwise payable under this part,

(4) Violations of highly erodible land and wetland conservation provisions of 7 CFR part 12,

(5) Producers who are ineligible under any provisions of law, including regulations, relating to controlled substances (see for example 7 CFR 718.6), or

(6) A producer’s debarment by a federal agency from receiving any federal government payment if such debarment included payments of the type involved in this matter.

(c) In general, no relief that is discretionary will be allowed except upon a finding by the Deputy Administrator or the Deputy Administrator’s designee that the person seeking the relief acted